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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Y.L., a Person Coming Under the
Juvenile Court Law.

B169873
(Los Angeles County
Super. Ct. No. CK49224)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.L.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Affirmed.

Melissa A. Chaitin, under appointment by the Court of Appeal, for Defendant and Appellant.

Lloyd W. Pellman, County Counsel, Larry Cory, Assistant County Counsel, and Arezoo Pichvai, Deputy County Counsel, for Plaintiff and Respondent.

Appellant B.L. (mother) appeals the juvenile court's order awarding sole legal custody of Y.L. and K.L. (collectively, the children) to their father, J.P. (father). We find no abuse of discretion, and we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 10, 2002, the Department of Children and Family Services (DCFS) filed its initial petition under Welfare and Institutions Code section 300, subdivisions (b), (d), and (j),¹ on behalf of the children.² The petition alleged that mother's boyfriend sexually abused Y.L. and that mother knew of the abuse yet failed to take action to protect Y.L. The petition further alleged that mother punished Y.L. for disclosing the abuse and accused her of lying about the abuse. The petition also alleged that mother was the victim of domestic violence. Based upon the allegations in the petition, the juvenile court ordered the children detained.

On August 6, 2002, DCFS filed an amended petition, and the juvenile court sustained the allegations contained therein. The juvenile court released Y.L. to her father, who resides in Florida, for an extended summer visit and permitted K.L. to visit with her father if she desired. The matter was continued for disposition.

In its September 6, 2002, report, DCFS reported that Y.L.'s visit with her father was going well and that she wanted to live with him. K.L. was also visiting with her father, but was unable to make a meaningful statement because of her young age. Father wanted custody of his daughters, and his wife was supportive of having her stepchildren reside in their home. Furthermore, the social worker noted that since the onset of the children's detention, father had shown interest and concern for his children's safety, welfare, and well-being.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Y.L. and K.L. also have a half-brother, C.L.; the petition alleged that mother's boyfriend physically abused C.L. and that mother failed to protect him as well.

On September 6, 2002, the juvenile court ordered the children to remain with their father in Florida, and ordered an investigation of his home for placement. Mother agreed with the recommendation that the children remain with their father.

On October 23, 2002, the social worker reported that Y.L. continued to enjoy living with father and was proud of herself for doing well in school. She stated: "My sister likes it a lot here and we want to stay here I don't want to go back with my mom." Mother had contacted the children only once since they had been released to their father in Florida. At the October 23, 2002, hearing, the juvenile court ordered that the children remain with their father pending the status of the investigation of father's home.

On December 10, 2002, the social worker reported that father was spending time trying to understand Y.L.'s experience as a victim of child abuse. Father and the stepmother were "working as a team to help support Y.L. by understanding her needs and being patient with her fluctuating behavior." Father was attempting to seek counseling for Y.L. The social worker found that both father and the stepmother had demonstrated how much they loved the children. "[Father] is a very dedicated father and is willing to do what it takes to support his daughters in what they need. He appears to be a very good father." Meanwhile, mother's telephone calls to the children were sporadic, and when she did call, she was rude to father and his wife.

On January 15, 2003, mother completed a 20-week parenting class and continued to attend on a regular basis.

On January 21, 2003, the juvenile court proceeded to disposition, declared the children dependents of the court pursuant to section 300, subdivisions (b) and (d), and ordered the children released to their father. The juvenile court further ordered mother to participate in parenting classes and individual counseling to address sexual abuse, physical abuse, and domestic violence issues.

On March 28, 2003, mother's counselor reported that her individual counseling had been terminated. She attended a total of 15 sessions. During those sessions, mother had improved her awareness of sexual abuse and domestic violence.

In a report dated April 3, 2003, the Florida Department of Children and Families social worker found that father appeared to have a loving relationship with the children. The girls were quick to go to father for affection. Y.L. held his hand throughout the interview, and K.L. approached him from time to time for attention. When asked how they felt about the placement, the children responded that they were happy. The social worker concluded that “this household represents a positive placement for the children. The family seems to have developed a good relationship in a very short time.” She recommended that the children remain in the care of father in Florida. Shortly thereafter, father’s home was approved for placement.

On May 19, 2003, father expressed concern over mother’s contact with the children. She did not call often, and when she did, she would only speak with the children for a few minutes; she preferred to speak with K.L. During one of her telephone calls, Y.L. answered the telephone. Mother did not greet her, instead asking to speak with K.L. K.L. did not want to take the telephone call, and mother told Y.L. that she would call another day. Mother then hung up. Y.L. ran to father in tears, stating that mother hated her and cared only about K.L. On another occasion, after Y.L. answered the telephone, she began to cry. Y.L. told her father that C.L. told her that she was not his sister, and mother stated that she did not call Y.L. because C.L. did not want her to do so. Finally, on July 2, 2003, after a telephone call with mother, Y.L. burst into tears because her mother accused her of caring more about the church than her mother and ended the telephone call by telling Y.L. that she was not going to call her again.

On July 17, 2003, the Florida social worker recommended that DCFS close the case “as it is a very stable family and there are no concerns for the children’s well[-]being if left in the custody and care of their father. This counselor attests to the fact that both the father and stepmother have been providing with much care and love for these children.”

At the judicial review hearing on July 22, 2003, DCFS recommended that the juvenile court terminate jurisdiction over the children. Mother objected, and the matter was continued for a contested hearing.

On September 2, 2003, the parties agreed to terminate jurisdiction as to the children with a family law order granting father sole physical custody over the children. The parties also agreed that mother would have reasonable, unmonitored visits and telephone calls. The only issue in dispute was legal custody.

Following oral argument, the juvenile court awarded legal custody to father and terminated jurisdiction. The termination order was stayed pending receipt of a family law order.

Mother's timely appeal from the juvenile court's order awarding father sole legal custody followed.³

DISCUSSION

Standard of Review

We review the juvenile court's order awarding father sole legal custody for abuse of discretion. (*In re Tamneisha S.* (1997) 58 Cal.App.4th 798, 806.)

The Juvenile Court Did Not Abuse Its Discretion

“Sole legal custody” means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.” (Fam. Code, § 3006.)

Section 362.4 provides, in relevant part, that when “the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years, . . . the juvenile court on its own motion, may issue . . . an order determining the custody of, or visitation with, the

³ Mother filed a notice of appeal following the juvenile court’s September 2, 2003, order, prior to receipt of the family law order. After the family law order was filed on September 9, 2003, and the stay was lifted, mother filed an amended notice of appeal.

child.” The focus of a custody order is the best interests of the child. (*In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.)

The evidence presented to the juvenile court overwhelmingly supports its order awarding father sole legal custody of the children. Following removal from their mother’s home, the children lived with their father in Florida for nearly one year. During that time, father showed great concern for the children’s safety, welfare, and well-being. He spent time trying to understand Y.L.’s experience as a victim of sexual abuse and obtained counseling for her. As the social worker reported, he is a very dedicated father who is willing to do what it takes to support his children. He is loving, and the children have a good relationship with him. On the other hand, mother has continued to deny the sexual abuse, and her telephone calls have been detrimental to Y.L. Under these circumstances, the award of sole legal custody to father was not an abuse of discretion.

The fact that father lives out-of-state does not compel an award of joint custody. Contrariwise, as the juvenile court expressly noted, under these circumstances, it makes far more sense for the father to have sole legal custody given that the children are residing with him in Florida.

We are not persuaded by mother’s argument that she will be prejudiced by the juvenile court’s order because in future family court proceedings there will be a presumption in favor of maintaining the status quo. (*In re Jennifer R., supra*, 14 Cal.App.4th at pp. 711-712.) As set forth above, the primary concern is children’s best interests, and ample evidence supports the juvenile court’s determination that it is in their best interest for father to have sole legal custody. “Should circumstances change in the future [mother] is free to seek joint legal custody in the family law court.” (*Id.* at p. 714.)

DISPOSITION

The juvenile court order is affirmed.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
NOTT